IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2017 of 2007
with
CIVIL APPLICATION NO.5712 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
ABDUL REHMAN RAMJU KHISARA - Defendant(s)

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Appearance :
MRS FALGUNI D PATEL for Appellant(s) : 1,
MR KISHOR M PAUL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/05/2007

ORAL JUDGMENT

Present appeal is filed by the Gujarat State Road Transport Corporation challenging the judgment and order passed by the learned Commissioner for

Workmen's Compensation, Labour Court, Kutchh dated 7-1-2005 passed in Workmen Compensation (NF) No. 26 of 1998, by which the learned Commissioner has awarded Rs.33,258/- by way of compensation to the respondent employee/workman.

2. The learned advocate appearing on behalf of the appellant has submitted that the application was submitted after a period of two years from the date of alleged accident and therefore, considering section 10 of the Workmen's Compensation Act, application itself is not maintainable. It is required to be noted that on considering the judgment and order passed by the learned Commissioner, it does not appear that such a plea was ever taken by the appellant. Even, in the present appeal memo also, such a plea is not taken. It is also not the case on behalf of the appellant that such a plea was raised, still the learned Commissioner has not considered. Whether the application was submitted after a period of two years and if yes, in that case, whether there was any application for condonation of delay, all are required to be considered on appreciation of evidence. If such a plea would have been taken at the relevant time, the original claimant could have pointed out that if the application is after two years, then the application was given for condonation of delay and the delay was condoned. It is also further submitted on behalf of the appellant that doctor was not examined with regard to disability. However, one Dr. Hansaben was examined at Exh-56.

Considering the fact and the evidence on record that the workman has lost his one eye and considering the schedule of the Workmen Compensation Act, it cannot be said that the learned Commissioner has committed any error and/or illegality and/or acting contrary to the evidence on record. The learned advocate appearing on behalf of the appellant has failed to satisfy this Court with regard to any substantial question of law. Under the circumstances, the present appeal is required to be dismissed and is accordingly dismissed. No costs.

3. In view of dismissal of main first appeal, no order in civil application.

(M.R. Shah, J.)

shekhar/-